

---

**OPINION OF THE PUBLIC ACCESS COUNSELOR**

---

LINDSEY D. ERDODY,  
*Complainant,*

v.

CITY OF WESTFIELD,  
*Respondent.*

---

Formal Complaint No.  
18-FC-3

---

Luke H. Britt  
Public Access Counselor

---

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the City of Westfield (“City”) violated the Access to Public Records Act<sup>1</sup> (“APRA”). The City responded on December 4, through counsel Brian Zaiger. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on January 5, 2017.

---

<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10

## **BACKGROUND**

Lindsey Erdody (“Complainant”) filed a formal complaint against the City of Westfield for over-redacting documents in violation of the Access to Public Records Act.

On December 21, 2017, the Complainant retrieved records produced by the City pursuant to a prior access request seeking documentation regarding the Grand Park Sports Complex. The production contained twenty .pdf document sets with multiple redactions. The Complainant took exception to the redactions without the City providing an explanation or statutory justification for the redaction. When pressed, the City cited the protection of trade secrets as justification. Among the items redacted were the square footage rented from a city-owned facility, the rent charged by the City, the amount paid by the City for services and signatures of the individuals on the contracts. She also takes exception to the quality of the documents as difficult to read.

The City responded first by arguing that the City is under “no obligation to provide copies for one requesting documents” under the APRA. Therefore seemingly a requester should be grateful for whatever documents they get, regardless of readability.

Secondly, the City stands by the argument that rental pricing information for the City is a trade secret. It is unclear from the City’s response whether the City as a Landlord or the private entity as a Tenant would be economically harmed. Furthermore, it appears to argue the burden is on the requester to set forth arguments why the information is not trade secret.

## ANALYSIS

APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The City of Westfield is a public agency for the purposes of the APRA; and therefore, subject to its requirements. Ind. Code § 5-14-3-2(n). Thus, any person has the right to inspect and copy the City’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

It should first be noted that a public agency has an explicit affirmative duty to provide requested copies of public records under Indiana Code § 5-14-3-8(e). The requester can choose to make copies on his or her own device and avoid a charge, but to suggest an agency does not have to provide copies is antithetical to a primary bedrock principle of the Act itself. If the agency has a copy machine or is otherwise capable of producing copies, it must do so under subsection (8)(3).

This Office only had the opportunity to review one of the twenty contracts in question and it was indeed difficult to decipher, but not impossible to read. The contract provided was between the City and an entity known as NinjaZone Academy at West Park, LLC. I am confident the City of Westfield has the technological means to reproduce images and documents cleanly and clearly. It should be mindful in

the future that the public is *entitled* to reasonably legible copies of its information.

Moreover, the burden of non-disclosure is always on the public agency when withholding information. When redacting, or withholding documents, a denial must be accompanied with the statutory justification for non-disclosure. In the current instance, that justification would be Ind. Code § 5-14-3-4(a)(4) – records containing trade secrets. "Trade secret" has the meaning set forth in IC 24-2-3-2:

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

While the City has satisfied the second prong of the two-part test under the trade secret statute, it does not present a compelling burden as to how or why price-per-square-footage pricing information by a municipal landlord would ever qualify as having independent economic value. No evidence has been provided to suggest it is a proprietary formula, methodology, strategy, process, or technique.

There is no dispute that public records documenting bids, reports and contracts may very well contain trade secrets. Proprietary information is often submitted to prove qualifications and analysis for a project, but terms of a final offer of an agreement are always subject to disclosure. The public has the right to scrutinize a contract and decide whether their public officials are being good stewards of public resources. Grand Park is a public municipal building and a revenue-generating project. Transparency of that revenue is essential to government accountability.

Finally, the signatures on the contract have been redacted. The City has not cited to any and this Office is unaware of any statute which authorizes the redaction of signatures from a public document for any reason.

## **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor that the City of Westfield has redacted information from a public document with no legitimate statutory justification for doing so.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

**Luke H. Britt**  
Public Access Counselor